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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,823	06/26/2001	John R. Neefe	12071-003001	2643
26161	7590	01/07/2004	EXAMINER	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110			SALIMI, ALI REZA	
			ART UNIT	PAPER NUMBER
			1648	
DATE MAILED: 01/07/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/891,823

Applicant(s)

NEEFE ET AL.

Examiner

A R Salimi

Art Unit

1648

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 08 December 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: The amendment raises new 112 2<sup>nd</sup> issues, see claim 43 which lacks antecedent bases.

3. ☒ Applicant's reply has overcome the following rejection(s): None.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☒ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1-4, 6, 8-13 and 36-80.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

ALL R. SALIMI  
PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: the entire invention is an observation and not an invention, Applicants' understanding of inherency is misplaced.

The entire Application is an observation, Mizzen et al upon administration of the composition of their invention would also observe the same results as now being claimed. The Office provided the evidence authored by Goldstone et al which clearly states that they obtained Mizzen's product and observed the results. Applicants did not make the fusion protein all they did was administer the fusion protein taught by Mizzen et al and afterwards observed the reduction of warts. Mizzen et al upon administration of their product would observe the same. In addition, it appears that Applicants do not agree with SPE Housel, since during their interview, SPE Housel clearly stated that in his opinion Zhou's teaching was anticipatory. Once again Applicants argue that Zhou taught prophylactic and therapeutic application, but not cross reactive immune response. Applicants admit that Zhou taught prophylactic application, even if Office were to accept the narrow interpretation of Zhou's reference, the prophylactic by its very nature is not directed to only one type of HPV. Zhou's product would also cross protect other HPVs. Applicants make assertion without any evidence to the contrary.

✓  
ALI R. SALIMI  
PRIMARY EXAMINER